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In the Supreme Court of the United States

OCTOBER TERM, 1978

SEABOARD COAST LINE RAILROAD COMPANY, ET AL.,

PETITIONERS,

v.

SEABOARD ALLIED MILLING CORP., ET AL.,

RESPONDENTS.

PETITION FOR WRIT OF CERTIORARI TO UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

PETITIONERS' REPLY

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SEABOARD COAST LINE RAILROAD COMPANY, ET AL.,

PETITIONERS,

v.

SEABOARD ALLIED MILLING CORP., ET AL.,

RESPONDENTS.

On Petitions for Writ of Certiorari to the
United States Court of Appeals
for the Eighth Circuit

REPLY OF PETITIONER SEABOARD COAST LINE RAILROAD COMPANY, ET AL., TO BRIEF FOR SEABOARD ALLIED MILLING CORP., ET AL., IN OPPOSITION

This is a reply by Seaboard Coast Line Railroad Company, Louisville and Nashville Railroad Company, Illinois Central Gulf Railroad Company and St. Louis-San Francisco Railway Company specifically to the arguments in opposition to the issuance of a Writ of Certiorari in the joint filing made to this Court by Seaboard Allied Milling Corp., Archer Daniels Midland Company, ADM Milling Co., Conagra, Inc., Dixie-Portland Flour Mills, Inc., Southeastern Poultry and Egg Association and States of North Carolina and Indiana.

Section 4(1) Violations Were an Afterthought Issue Raised Before the Commission in Skeleton Form Which Has Been Magnified Beyond Reasonable Proportions

The question of whether or not the Interstate Commerce Commission ("the Commission") allowed a publication to go into effect which violated Section 4(1) of the Interstate Commerce Act ("Act") is an issue, *an afterthought issue*, which has been developed and unreasonably played upon by the Protestants before the lower Court and now before this Court. The tariff-filing railroads never requested and were never granted any relief to depart from the requirements of Section 4(1) of the Interstate Commerce Act.[1] The Protestants to the increase, during the suspension stage, did not pursue the issue in their protest.[2] The issue was raised and argued in a separate filing entitled "Petition for Rejection of Tariff Publication" which requested not that the Commission investigate to determine whether or not there were any violations but that the Commission take the drastic step of actually rejecting the filing of the tariff without investigation.[3]

1/ The text of 49 U.S.C. §4(1), recodified at 49 U.S.C. §10726 is found at page F-1, Seaboard Coast Line Railroad Company, et al., Petition for Issuance of a Writ of Certiorari to the Eighth Circuit.

2/ The initial petition to reject was filed by September 6, 1977, the deadline date for protest. However, the Protestants had misinterpreted the tariff and the violations alleged were disproved, through verified reply, by the railroads.

3/ Rejection of a tariff is normally an informal matter which simply allows a filing party to correct an error before consideration by an administrative body. *Municipal Light Boards v. F.P.C.*, 450 F.2d. 1341 (D.C. Cir. 1971). In this case, the Protestants were requesting that the rate publication, in essence, be permanently rejected. The Court is reminded that this particular tariff publication was made to apply during a seasonal movement of grain. Delay awaiting republication could have completely destroyed the purpose of the publication in the first place.

While the Protestants proclaim to the Court that there was compelling verified evidence before the Commission to support the claim of patent illegality under Section 4(1), the record shows that indeed the evidence which was presented to the Commission in verified protest filings covered various and sundry issues other than the possibility of illegality because of long-and-short haul violations. On the other hand, the Petition for Rejection, as supplemented, was a document prepared by Protestants' lawyers, unverified, which argued the legality of the continuation of a publication if such violations did exist. The legal arguments had attached to it an "exhibit" page which listed two "illustrative" violations. However, railroads were able to respond to the two routes listed by Protestants with a complete answer showing that the routes did not violate the provisions of Section 4(1). The supplementary information,[4] which was filed too late to allow railroads properly to research and respond,[5] contained an additional listing of point-to-point routes to which the rate applied, that were allegedly in violation of the Act.

The Commission does not have the authority under Section 15(8) to reject a tariff. As a matter of fact, the Mann-Elkins Act[6] specifically took into account the need to protect railroads from such arbitrary action. For this reason the Commission can only suspend for a period of seven months before making a decision. And the decision that is made after a rate is suspended must be made on the basis of an investigation, an investigation by the Commission's staff without hearing or an investigation within a formal hearing.

4/ The Supplementary Petition for Rejection was a desperate *late-filed* attempt to re-establish an issue which had been completely negated by railroads' reply.

5/ The Railroads did respond within twenty-four with only hours left for Commission consideration.

6/ See Seaboard Coast Line Railroad Company, et al., Petition, pp. 6, 12-13.

The Petition for Rejection which was filed by Protestants, and on which they have built an entire argument before the lower Court and are now attempting to do before this Court, is without framework and collapses on only a cursory review of the record.

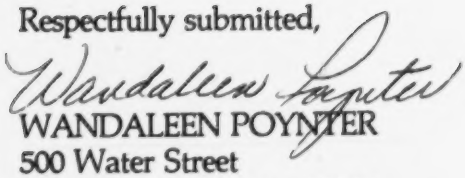
In the pleadings, which were timely and properly filed, the primary basis of protest was that of the reasonableness and lawfulness of the publication under other sections of the Interstate Commerce Act. The Protestants simply did not carry the burden of proof which they are required to carry, [7] by the filing of *verified* protests, to convince the Commission that it should suspend or even that it should investigate.

It is clear that Protestants, realizing the weakness of the protests which had been made within the confines of the Section 15(8) framework sought to place themselves in a position they could not attain properly by filing the Petition to Reject. This was an attempt to pressure the Commission into a full investigation of a rate publication under Section 15(8) rather than an investigation on the single issue of Section 4(1) departures. This fact is evident since the Commission has held that a Section 4(1) violation over one route creates *no* presumption that the rate charged over another route between the same points is unreasonable. *Utah-Idaho Sugar Co. v. Chicago, M. St. P. & P. Co.*, 306 I.C.C. 599, 601-2 (1959).

If the Commission had elected to take the drastic step of rejecting the publication on two alleged violations, to which the railroads had responded by showing conclusively that there were no departures, and late-filed supplementary allegations, it would have been a clearly arbitrary act. This is especially true since the Protestants still had the Commission open to them for the filing of appropriate complaint.

7/ See Seaboard Coast Line Railroad Company, et al., Petition, p. 13, footnote 12.

Respectfully submitted,



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